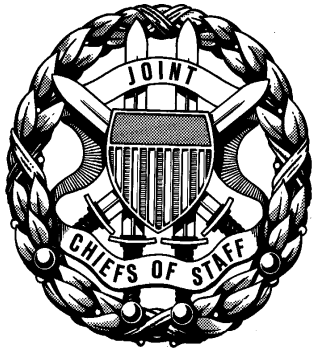


CJCSI 2410.01A
23 April 1997

GUIDANCE FOR THE EXERCISE OF RIGHT OF ASSISTANCE ENTRY



JOINT STAFF
WASHINGTON, D.C. 20318-0300



CHAIRMAN OF THE JOINT CHIEFS OF STAFF INSTRUCTION

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- References:
- a. "Statement of Policy by the Department of State, the Department of Defense, and the United States Coast Guard Concerning Exercise of the Right of Assistance Entry," 8 August 1986
 - b. Joint Pub 3-50/COMDTINST M1620.5 (Coast Guard), 1 February 1991, "National Search and Rescue Manual," Volume 1
 - c. DOD 2500.1M, 6 January 1997, "Maritime Claims Reference Manual"
 - d. CJCSI 3121.01, "Standing Rules of Engagement for US Forces," Enclosure A, subparagraph 8(e)

1. Purpose. This instruction establishes uniform policy for the exercise of the right of assistance entry (RAE) by US military ships or aircraft within the territorial seas or archipelagic waters of foreign states.

2. Cancellation. CJCSI 2410.01, 20 July 1993, "Guidance for the Exercise of Right of Assistance Entry," is hereby canceled.

3. Applicability. This instruction applies to the CINCs, Services, and the Directors for Operations and Strategic Plans and Policy, Joint Staff. Copies are provided to the Secretary of State and the Commandant of the Coast Guard for information and use as appropriate.

4. Background

- a. For centuries, mariners have recognized a humanitarian duty to rescue persons in distress due to perils of the sea, regardless of their nationality

or location. The international community has long accepted the right of vessels of any nation to enter a foreign state's territorial sea to engage in good faith efforts to render emergency assistance. RAE is independent of the customary international legal rights of innocent passage, transit passage, and archipelagic sea lanes passage.

b. Following incidents in which US vessels on scene failed to assist ships in distress because of excessive concern about entry into the territorial sea of another state, the Department of Defense, DOS, and US Coast Guard reviewed USG policy. The result was a unified statement of policy concerning RAE within the territorial sea of another state, issued in August 1986 (reference a).

c. The UN Law of the Sea Convention provides that ships of all states enjoy the right of innocent passage through the territorial sea of other states. Article 18 of the Convention provides that passage includes stopping and anchoring for the purpose of rendering assistance to persons, ships, or aircraft in danger or distress. Article 52 also provides that innocent passage applies in archipelagic waters. As the regime of innocent passage now applies to archipelagic waters, and given the longstanding duty of mariners to render assistance to persons in distress due to perils of the sea, it follows that the right of assistance entry is equally applicable to archipelagic waters.

d. This instruction implements the 1986 statement of policy and extends it to include archipelagic waters. This instruction applies in all cases except those specifically covered by prior agreements with foreign states that address assistance to persons, ships, or aircraft in their territorial seas or archipelagic waters. The Enclosure discusses bilateral RAE agreements with Canada and Mexico.

5. Policy

a. RAE applies only to rescues in which the location of the persons or property in danger or distress is reasonably well known. The right does not extend to conducting area searches for persons or property in danger or distress when their location is not yet reasonably well known. US forces will conduct area searches within a US-recognized foreign territorial sea or archipelagic waters only with the permission of the coastal state. Such permission may be by international agreement, such as a search and rescue (SAR) agreement with that state, as listed in Appendix B of reference b. When considering or conducting area searches within a claimed or US-

recognized foreign territorial sea or archipelagic waters, commanders should inform those agencies listed in Enclosure A, subparagraph 4a.

b. RAE into the territorial sea or archipelagic waters of a foreign state involves two conflicting principles: (1) the right of nations to regulate entry into and the operations within territory under their sovereignty, and (2) the time-honored mariners' imperative to render rapid and effective assistance to persons, ships, or aircraft in imminent peril at sea without regard to nationality or location.

c. The operational commander on the scene must determine whether RAE is appropriate under the circumstances. The test is whether a person, ship, or aircraft, whose position within the territorial sea or archipelagic waters of another state is reasonably well known, is in danger or distress due to perils of the sea and requires emergency assistance.

d. In determining whether to undertake RAE actions, commanders must consider the safety of the military ships and aircraft they command, and of their crews, as well as the safety of persons, ships, and aircraft in danger or distress.

e. Commanders should also consider whether other rescue units, capable and willing to render timely and effective assistance, are on the scene or immediately en route.

f. The customary international law of RAE is more fully developed for vessels than for aircraft. Therefore, the military commander must consider the possible reaction of the coastal or archipelagic state, especially if the commander intends to employ military aircraft within its territorial sea or its archipelagic waters.

g. Although exercise of RAE does not require the permission of the foreign coastal or archipelagic state, US commanders should notify that state's authorities of the entry in order to promote international comity, avoid misunderstanding, and alert local rescue and medical assets.

h. Because of the implications for international relations and for US security, commanders should keep appropriate authorities and the National Military Command Center (NMCC) informed. See Enclosure A, subparagraph 4a.

- i. RAE actions should comply with any applicable bilateral RAE and SAR agreements (Enclosure B), including those listed in Appendix B of reference b.
- j. Reference c is the DOD source document for determining the scope of a particular maritime claim (e.g., extent of a claimed territorial sea) and whether or not that particular maritime claim is recognized by the United States. The fact that the United States has conducted an operational freedom of navigation assertion or sent a protest note regarding a particular coastal state claim can be taken as nonrecognition of the claim in question. Otherwise, the territorial sea of a coastal state or the archipelagic waters of an archipelagic state will be regarded as presumptively valid for the purposes of this instruction. The DOS "Limits of the Seas" series and the Naval War College "Blue Book, Vol. 66," are secondary sources for determining whether and to what extent a particular country's maritime claims are considered excessive by the United States.
- k. The policy set forth in this instruction is consistent with the current standing rules of engagement for US forces pursuant to reference d.

6. Definitions

- a. Operational commander on the scene. The senior officer in tactical command of the unit(s) capable of rendering meaningful and timely assistance; this commander is responsible for coordinating rescue efforts at the site.
- b. Territorial sea. The belt of ocean measured seaward up to 12 nm from a state's baselines determined in accordance with international law and subject to the state's sovereignty. The United States does not recognize the portions of claimed territorial sea more than 12 nm from properly drawn baselines.
- c. Archipelagic waters. An archipelagic state is a state that is constituted wholly of one or more groups of islands. Such states may draw straight archipelagic baselines joining the outermost points of their outermost islands, providing the ratio of water to land within the baselines is between 1 to 1 and 9 to 1. The waters enclosed within properly drawn archipelagic baselines are called archipelagic waters and are subject to the archipelagic state's sovereignty.
- d. Danger or distress. A clearly apparent risk of death, disabling injury, loss, or significant damage.

e. Perils of the sea. Accidents and dangers peculiar to maritime activities, including storms, waves, and wind; grounding; fire, smoke, and noxious fumes; flooding, sinking, and capsizing; loss of propulsion or steering; and other hazards of the sea.

f. Emergency assistance. Rescue action that must be taken without delay to avoid significant risk of death or serious injury or the loss of or major damage to a ship or aircraft.

g. Military ships and aircraft. For the purposes of this instruction, a US military ship is either a warship designated “USS” or an auxiliary in the Military Sealift Command (MSC) force. For the purposes of this instruction, a US military aircraft is an aircraft operated by a unit of the US Armed Forces, other than the Coast Guard (except when operating as part of the Navy), bearing military markings and commanded and manned by personnel of the Armed Forces.

7. Responsibilities

a. The Chairman of the Joint Chiefs of Staff will monitor the exercise of RAE and develop further procedural guidance for the CINCs and the Chiefs under the overall DOD policy guidance.

b. The combatant commanders will issue policy guidance and specific procedural reporting requirements tailored to their areas of regional responsibility and the forces under their operational control.

c. The NMCC will follow routine procedures to coordinate with cognizant DOS and US Coast Guard officials to ensure timely notification, review, and response to CINCs and operational commanders in RAE situations.

d. The Military Services will provide training on RAE operations, coordination, and communications procedures.

e. Guidance for operational commanders is contained in Enclosure A.

8. Summary of Changes. This revision updates CJCSI 2410.01 to include the right of assistance entry within archipelagic waters, clarifies that RAE only applies within a foreign state’s US-recognized territorial sea or archipelagic waters, and clarifies that the instruction applies to auxiliaries in the MSC Force.

9. Effective Date. This instruction is effective upon receipt.

For the Chairman of the Joint Chiefs of Staff:

/Signature/
DENNIS C. BLAIR
Vice Admiral, U.S. navy
Director, Joint Staff

Enclosures:

- A--Guidance for Operational Commanders
- B--Bilateral Agreements Affecting Right of Assistance Entry

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ENCLOSURE A

GUIDANCE FOR OPERATIONAL COMMANDERS

1. The operational commander of a US military ship should exercise RAE and immediately enter a foreign state's US-recognized territorial sea or archipelagic waters when all three following conditions are met:

- a. A person, ship, or aircraft within the foreign territorial sea or archipelagic waters is in danger or distress from perils of the sea and requires emergency assistance.
- b. The location is reasonably well known.
- c. The US military ship is in a position to render timely and effective assistance.

Although not a required condition, the operational commander should also consider whether other rescue units, capable and willing to render timely and effective assistance, are on the scene or immediately en route.

Military ships conducting RAE operations will not deploy aircraft (including helicopters) within a US-recognized foreign territorial sea or archipelagic waters unless paragraphs 2 or 3 below apply.

2. An operational commander may render emergency assistance employing US military aircraft in a US recognized foreign territorial sea or archipelagic waters under RAE only when the commander determines that all four following conditions apply:

- a. A person, ship, or aircraft in the foreign territorial sea or archipelagic waters is in danger or distress from perils of the sea and requires emergency assistance.
- b. The location is reasonably well known.
- c. The US military aircraft is able to render timely and effective assistance. If available, unarmed aircraft will be used to conduct RAE activities.
- d. Any delay in rendering assistance could be life threatening.

Although not a required condition, the operational commander should also consider whether other rescue units, capable and willing to render timely and effective assistance, are on the scene or immediately en route.

3. An operational commander may render assistance in non-life-threatening situations employing US military aircraft in a US-recognized foreign territorial sea or archipelagic waters under RAE when the following two conditions are met:

- a. The conditions in subparagraphs 2a, b, and c above are met.
- b. The cognizant CINC or other appropriate authority in the operational chain of command has specifically authorized the exercise of RAE employing aircraft. Before authorizing RAE employing aircraft, such higher authority will consult with the DOS (Operations Center) by contacting the NMCC.

4. When a commander enters or authorizes entry into the claimed or US-recognized territorial sea or archipelagic waters of a foreign state under RAE, the commander will immediately notify:

- a. Appropriate authorities and the NMCC by an OPREP-3 PINNACLE. The OPREP-3 PINNACLE will describe location; unit(s) involved; nature of the emergency assistance; reaction by the coastal or archipelagic state, including efforts to deny entry or offers of assistance; and estimated time to complete the mission. The NMCC will immediately inform the DOS (Operations Center) and Headquarters, US Coast Guard (Flag Plot). (USCG HQ is prepared to facilitate contacting foreign state rescue authorities to notify them of the RAE operation, as appropriate.) The cognizant Chief of Mission and US Defense Attache Office (USDAO) will be information addressees.
- b. The coastal or archipelagic state, by the fastest means available, of the location, unit(s) involved, nature of the emergency and assistance required, whether any assistance is needed from that government, and estimated time of departure from the territorial sea or archipelagic waters. Contact will normally be with the Rescue Coordination Center of the foreign state involved.

ENCLOSURE B

BILATERAL AGREEMENTS AFFECTING
RIGHT OF ASSISTANCE ENTRY

International agreements to which the United States is a party and that modify the application of this guidance are discussed below. (For more information, see Appendix B of reference b.)

a. Canada. "Memorandum of Understanding Between the United States Coast Guard, the United States Air Force, the Canadian Forces and the Canadian Coast Guard on Search and Rescue," 24 March 1995.

(1) This understanding states that in accordance with customary international law, solely for the purposes of rendering emergency rescue assistance to persons, vessels, or aircraft in danger or distress, when the location is reasonably well known, SAR units of either country may immediately enter onto or over the territory or the territorial seas of the other country, with notification of such entry made as soon as practicable.

(2) Pursuant to this understanding, commanders should notify the nearest Canadian Rescue Coordination Centre (RCC). (Upon receipt by the NMCC of the OPREP-3 required in subparagraph 4a, Enclosure A of this instruction, the NMCC will notify US Coast Guard Headquarters, which will arrange contact with the appropriate Canadian RCC.)

b. Mexico. Treaty to Facilitate Assistance to and Salvage of Vessels in Territorial Waters," 13 June 1935, T.I.A.S. No. 905, 49 Stat. 3359.

(1) This treaty permits vessels and rescue equipment of either country to assist vessels (and crews) of their own nationals that are disabled or in distress within the territorial waters or on the shores of the other country:

(a) Within a 720-nm radius of the intersection of the international boundary line and the Pacific Coast.

(b) Within a 200-nm radius of the intersection of the international boundary line and the coast of the Gulf of Mexico.

(2) The treaty requires the commander to send notice of entry to assist a distressed vessel to appropriate authorities of the other country at the earliest possible moment. Assistance efforts may proceed unless the authorities advise that such assistance is unnecessary.

(3) In this treaty, assistance means any act that helps prevent injury arising from a marine peril to persons or property, and the term vessel includes aircraft.